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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

15 B&G FOOD NORTH AMERICA, INC.,  
16 Plaintiff,  
17  
18 v.  
19 KIM EMBRY and ENVIRONMENTAL  
20 HEALTH ADVOCATES, INC., acting as  
enforcement representatives under California  
Proposition 65 on behalf of the State of  
California,  
21 Defendants.  
22

Case No. 2:20-cv-00526-KJM-DB

**PLAINTIFF B&G FOODS NORTH  
AMERICA, INC.'S STATEMENT  
REGARDING ORAL ARGUMENT**

Date:	March 10, 2023
Time:	10:00 a.m.
Judge:	Hon. Kimberly J. Mueller
Courtroom:	3
SAC Filed:	November 23, 2022
Trial Date:	None Set

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1 At oral argument today, the Court inquired whether the State of California has ever litigated  
 2 a Prop 65 case along with a private enforcer. It has. B&G Foods respectfully submits this statement  
 3 to identify several cases in which that has occurred:

- 4 • *People ex rel. Brown v. Tri-Union Seafoods, LLC*, S.F. Super. Ct. No. CGC-04-432394;  
 5 related case: *Public Media Ctr. v. Tri-Union Seafoods, LLC*, S.F. Super. Ct. No. CGC-  
 6 01-402975 (Attorney General co-litigated Prop 65 case with private enforcer regarding  
 7 mercury in tuna). This matter was litigated successfully by B&G Foods's counsel  
 8 Forrest Hainline. A copy of the Court of Appeal's final decision is attached as Exhibit 1.
- 9 • *People v. Dakota Bros.*, Alameda Super. Ct No. CGC-13-531045, related cases: *Center*  
 10 *for Environmental Health v. Food Market Mgmt., Inc.*, Alameda Super. Ct. No. CGC-  
 11 12-526395; *Center for Environmental Health v. Fayeon Distributors, Inc.*, Alameda  
 12 Super. Ct. No. CGC-12-526396 (Attorney General co-litigated Prop 65 case with private  
 13 enforcer regarding lead in ginger). A copy of the Consent Judgment is attached as  
 14 Exhibit 2.
- 15 • *People v. Burlington Coat Factory Warehouse Corp.*, Alameda Super. Ct. No. RG 04-  
 16 162075 (Attorney General filed suit based on initial investigation conducted by private  
 17 enforcer regarding lead in jewelry; in subsequent consent judgment, fees were awarded  
 18 to private enforcer). A copy of the Consent Judgment is attached as Exhibit 3.
- 19 • *People v. PepsiCo, Inc.*, L.A. Super. Ct. BC351120 (Attorney General filed action based  
 20 on investigation of private enforcer regarding lead in soda; in subsequent consent  
 21 judgment, fees were awarded to private enforcer). A copy of the Consent Judgment is  
 22 attached as Exhibit 4.

23  
 24 Dated: March 10, 2023

Respectfully submitted,

25 BRAUNHAGEY & BORDEN LLP  
 26 By: /s/David H. Kwasniewski  
 27 David H. Kwasniewski

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 29 *Attorneys for Plaintiff*  
 30 *B&G Foods North America, Inc.*